

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3241/1999

M/s. S. B. Panchal & Co. a Firm
 having its office at 8, Jogani Industrial
 Estate, 541, Senapati Bapat Marg,
 Dadar (WR), Mumbai-400 028.

.....PETITIONER

...V E R S U S...

The Saraswat Co. Operative Bank Ltd.,
 having its Head Office at Madhu Kosh,
 S. V. Sohono Marg, Girgaum,
 Mumbai- 400 004 and Administrative
 Office at Apsara Cinema Building,
 Dadasaheb Bhandkamkar Marg,
 Mumbai- 400 007.

.....RESPONDENTS

Mr. Rajiv L. Patil, Advocate for the Petitioner.
 Mr. Prashant Naik, Advocate for the respondent.

CORAM:- R. V. MORE, J.

DATE :- 6th July, 2007

ORAL JUDGMENT

1. The petitioner, by filing the aforesaid petition, takes exception to the common judgment and order dated 20.11.1997

passed by Appellate Bench of Small Causes Court, Bombay, in the Full Court application Nos. 111/1996, 112/1996, 113/1996, and 114/1996 thereby reversing the judgment and decree passed by the trial Court in Summary Suit Nos. 2109/2166/1988, 2110/2167/1988, 2111/2168/1988 and 2112/2169/1988 respectively. The brief facts giving rise to the present petition are as follows:-

2. The petitioner is a partnership Firm carrying on the business of Pharmaceuticals Machinery and Fabrication work. In the year 1978, the petitioner Firm had opened an account with the respondent Bank at Worli Branch. The petitioner's account was operated by partners namely Amrutlal Chaturlal Panchal and brother Babulal Chaturlal Panchal. Usually, Amrutlal Panchal used to sign the cheques and in his absence, Babulal Panchal used to sign it. The respondent Bank issued to the petitioner cheque book with 50 leaves bearing Nos. 288451 to 288500. Out of these cheques, 4 cheques bearing Nos. 288478, 288479, 288496 and 288497 were stolen between 15.03.1985 and 26.04.1985. The petitioner got knowledge regarding the theft of these cheques in the month of January 1986.

After verification, the petitioner found that that the said cheques were not issued to any party. The petitioner, after enquiry with the Bank Officers, gathered the knowledge that the said cheques were bearer cheques and the same were drawn in favour one Ali Khan and Raj Kumar. It was the case of the petitioner that none of the partners of the Firm has signed the cheques and the Firm has no dealings with the parties by name Ali Khan and Raj Kumar. The signatures made on the said cheques are forged one and the respondent Bank, without verifying the same, made payment to the bearer of the cheques. The petitioner, thereafter, made police complaint. The petitioner also preferred complaint to the Reserve Bank of India. The amount under the above said forged cheques was to the extent of Rs. 31,000/- (Rs. Thirty One Thousand Only). According to the petitioner they suffered loss because of gross negligence on the part of the respondent Bank and hence filed the above said four Summary suits for recovery of damages.

3. The respondent-Bank contested the claim of the

petitioner by filing written statement. The respondent contended that four cheques in question were presented on the counter of the Bank on 26.04.1985 and 27.04.1985 for payment and the said cheques were paid by respondent-Bank according to the apparent tenor of the instrument in good faith after verifying the contents of the cheques and signatures thereon, which tallied with the specimen signatures of one of the partners of the Firm namely Amrutlal Panchal and the respondent-Bank specifically denied that they have committed gross negligence in discharging their duties while clearing the cheques in question.

4. All the four summary suits came to be disposed of by the learned Small Causes Court, by common judgment dated 15.10.1996 and the same were decreed. The respondent-Bank was directed to pay to the petitioner an amount of Rs. 31,000/- (Rs. Thirty One Thousand Only) as claimed in the suit with interest at the rate of 6% p.a. The

respondent-Bank being aggrieved, preferred four Full Court

applications, which came to be disposed of by the Appellate Bench of the Small Causes Court by the order impugned in the petition. By this order the judgment and order passed by the learned trial Judge in Summary Suits came to be reversed and the Summary Suits were dismissed.

5. Having heard learned counsel for the respective parties and having gone through the judgments by the Courts below, I am of the considered view that no interference is required in the impugned order in my jurisdiction under Article 227 of the Constitution of India.

6. The petitioner claimed loss and damages against the respondent-Bank on the ground that the respondent-Bank has committed gross negligence thereby made the petitioner to sustain loss to the tune of Rs. 31,000/- (Rs. Thirty One Thousand Only). It is the case of the petitioner that they were not knowing the person by name

Ali Khan and Raj Kumar. Its partner has neither signed the cheques

in question nor issued those cheques to the above said persons and Worli Branch of the respondent Bank made the payment of these cheques without verifying the signatures of the petitioner's authorised person with utter disregard with the banking norms.

7. The trial Judge, on the basis of the pleadings in the plaint in Summary Suit placed the burden on the respondent-Bank to prove that the payment was made in accordance to the apparent tenor of the instrument in good faith and without negligence. The trial Court, while shifting this burden on the respondent-Bank, presumed that the cheques in question were stolen from the petitioner's custody. The trial Court failed to take into consideration in proper perspective that withdrawal of the amount by the aforesaid cheques was done on 26/27.04.1985 and till January-1986 the petitioner continued to operate their account in the Worli Branch of respondent-Bank. The cheques in question were also having rubber stamp of the petitioner Firm. The cheque book and the rubber stamp admittedly, as a matter of practice, used to be kept in the cupboard and the keys were with the above said two partners of the petitioner Firm and nobody had

access except these two partners to those cheque books and the rubber stamp to be affixed on the cheques. There is no dispute that the partners of the petitioner have not claimed any personal knowledge about theft of the cheques till they acquired knowledge in the month of January-1986 through their accountant. In my opinion, in the aforesaid circumstances the trial Court committed error in placing burden on the respondent-Bank to prove that the payment was made in accordance with the apparent tenor of the instrument in good faith. The respondent-Bank could not have been called upon to prove that the payment was made in accordance with the apparent tenor of the instrument in good faith unless and until the petitioner proves that the cheques in question were stolen and the signatures thereon were forged by the payee. The petitioner has not adduced any separate evidence except the statement and pleading to prove that the cheques were stolen and were not issued by them, and their signatures were forged. In these circumstances, the petitioner's suit must fail.

8. The Appellate Bench of the Small Causes Court, on the

basis of the record and proceeding, has observed that at one point of time the petitioner had informed the Court that they are examining hand writing expert to prove the signatures on the cheques in question were not that of the authorised person of their Firm but no such opinion of the handwriting expert is there on the record. From this observation it is apparent that the petitioners have not made any efforts to obtain handwriting expert's opinion in order to substantiate their case that the signatures of their partner on the cheques in question were forged one by the payee. Ordinarily, the banker, on whom the cheque is drawn, is required to ascertain the identity of the person named in the cheque and also authority of the person receiving payment if he is acting as an agent. But when an improper payment is made by the Bank or the banker having been misled by negligence or other fault on the part of the drawer, then the banker can set up such negligence as defence to secure protection under Section 85 of the Negotiable Instruments Act. In my opinion, the alleged loss or damage caused to the petitioner is the outcome of the negligence on their own part.

9. Be that as it may, the petitioner also made complaint to the Reserve Bank of India at their Bombay Office which is a supervisory Authority for the business of the banking done by the subordinate bankers. The Joint Chief Officer of the Reserve Bank Of India made an enquiry into the matter after having received complaint from the petitioner against the respondent-Bank. After enquiry, they found that the payment in respect of four cheques in question has been made by the respondent-Bank in good faith and in accordance with apparent tenor of the instrument and they have informed this fact to the petitioner accordingly, by their letter dated 05.01.1986. This report after *prima facie* enquiry stands in favour of the respondent-Bank, which has not been challenged by the petitioner anywhere. It is nowhere the case of the petitioner that the respondent-Bank made the payment contrary to their instructions or in excess of authority.

10. In view of the discussion made above, I am of the considered view that the Appellate Bench of the Small Causes Court has taken correct view of the matter by reversing the trial Courts judgment and order. I do not find any error which is required to be corrected in exercise of my jurisdiction under Article 227 of the

Constitution of India. The writ petition is, therefore, dismissed with no order as to the costs.

JUDGE